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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,559	01/23/2002	Peter Gross		6947

7590

07/29/2004

Warren N. Low  
Renee S. Rutkowski  
P.O. Box 2184  
Arlington, VA 22202

EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

12

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/052,559

Applicant(s)

GROSS ET AL.

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 16-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 16-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/04/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's Amendment filed 09/22/03 have been entered and carefully considered. Claims 1-15 have been canceled. New claims 16-45 have been added. However, limitations of new added claims have not been found to be patentable over prior art of record and newly discovered art, therefore claims 16-45 are rejected under the new ground rejections as set forth below.

#### ***Claim Objections***

Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 23 and 24 are duplicated claims.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18, 20, 22-24, 26-27 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert (1364188 IDS cited reference) in view of Brach (5487203).

With regard to claims 16-18, 20, 22-24, 26-27 and 45, Draenert discloses a toothbrush (fig. 3) comprising a bristle carrying front head part (2) and a handle (22), the handle being transparent and providing a closed inner cavity extending over at least part of the length; the toothbrush further having an elongated article (20) has printing on it (fig. 3) providing an aesthetic effect in the cavity and extending in a longitudinal direction of the toothbrush and being visible through the handle; the tooth brush further having a closure part (7) releasably connected to the rear end of the handle. Draenert does not disclose the handle being cylindrical shape and the article being a cylindrical, hollow roll has printing thereon, however, Brach discloses an implement handle (fig. 7) comprising a handle having a hollow roll (10) with printing (7) thereon and the roll being made of cardboard (col. 3, lines 28-29). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct disclose the handle being cylindrical shape, since such a modification would have involved a mere change in the shape of the component and it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the hollow roll as taught by Brach to be in a cylindrical shape into the toothbrush of Draenert for the purpose of providing indicia readable on all sides of the handle.

Claims 19, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Brach.

With regard to claims 19, 21 and 25, Draenert in view of Brach disclose a toothbrush comprising all the claimed limitations in claim 16 as discussed above except for the roll being transparent, the closure part being thermoplastic and non-releasable to the handle. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the roll being transparent, the closure part being thermoplastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to form a non-releasable closure part to the handle, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Claims 28-35, 37, 39-41 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Tortorice (600410).

With regard to claims 28-35, 37, 39-41 and 43-44, Draenert discloses a toothbrush as discussed above except for the article being an ampoule being filled with aesthetic effect. Tortorice discloses a toothbrush (fig. 3) having an ampoule (36) being filled aesthetic effect (52, col. 4, lines 55 – col. 5, lines 1-46). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to

employ the ampoule as taught by Tortorice into the toothbrush of Draenert for the purpose of providing an aesthetic look.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Tortorice as applied to claim 28 above, and further in view of Eubanks.

With regard to claim 36, Draenert in view of Tortorice disclose a toothbrush comprising all the claimed limitations in claim 28 as discussed above except for the ampoule being kept in the cavity by rearwardly directed tongues. Eubanks discloses a toothbrush (figs. 2-3) comprising a bristle-carrying front head part (14) and a handle (12) having a cavity (30) extending in the longitudinal direction of the toothbrush, the handle consisting of an at least partially transparent material (col. 3, line 32) and an article (48) being at least partially transparent (col. 2, lines 6-10 and col. 1, lines 48-49) and inside of the cavity and having printing (fig. 2) on it; the article being kept in its position in the position by a securing means (67) which comprises rearwardly directed tongues (60) arranging in the front region of the handle cavity, extent in the longitudinal direction, are made of an elastically material (col. 4, line 16) and are in arranged in the form of a circle, the card being kept between the tongues. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the ampoule being kept in the cavity by rearwardly directed tongues as taught by Eubanks into the toothbrush of Draenert in view of Tortorice for the intended use purpose.

Claims 38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Tortorice.

With regard to claims 38 and 42, Draenert in view of Tortorice disclose a toothbrush comprising all the claimed limitations in claim 28 as discussed above except for the closure part being thermoplastic and non-releasable to the handle. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the closure part being thermoplastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to form a non-releasable closure part to the handle, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

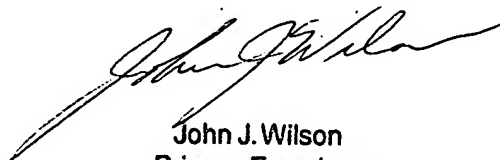
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Kieu Doan  
Examiner  
May 15, 2004



John J. Wilson  
Primary Examiner